CF0000062421

(2)

"allotted by the High Court Legal Services Committee"

Division Bench (Criminal)

समक्ष माननीय मध्यप्रदेश उच्च न्यायालय, जबलपुर

अपील अन्तर्गत धारा- 374 (2) दण्ड प्रक्रिया संहिता

क्रिमिनल अपील क्रमांक- 2337 /1999

तामो बुदरू पुत्र सामो पाण्डू

उम्र- 50 वर्ष

साकिन- ग्राम कुन्द्रली मड़कामी पारा

थाना- भान्सी, जिला- दन्तेवाड़ा

मध्य0 अपीलार्थी जेल में है ।

विरुद्ध

मध्यप्रदेश शासन

थाना- भान्सी

जिला- दन्तेवाड़ा

मध्य0 --- प्रत्यर्थी

दोष सिद्धि दण्ड

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

मामला क्रमांक Cr.A.No.2337/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH*: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

5/9/2006

Smt. Kiran Jain, counsel for the appellant.

Shri P.K. Verma, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 8-7-99 passed by the 2nd Additional Sessions Judge, Jagdalpur in S.T.No.47/99 whereby learned Additional Sessions Judge after convicting the accused/appellant for the commission of offence under Section 302 of the I.P.C. for committing murder of his wife Tamodeve, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that on the fateful day at about 8 p.m. in the night of 2-12-98 accused/appellant Tamo Budru was sleeping after taking his meal, at that time, deceased Tamodeve came and started assaulting the accused with an axe saying that as to why he has eaten her food, on which the accused snatched the axe and assaulted the deceased on her head, as a result of which the deceased sustained fatal injury and she succumbed to the injury.

The matter was reported by PW-1 Sukman to the Police Station Bhansi, on which F.I.R. (Ex.-P/1) was registered. After usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada,

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

who in turn committed the case to the Sessions Judge, Jagdalpur from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that his wife Tamodeve was attacking him with an axe and she received the injury because she fell down. Learned Additional Sessions Judge after hearing learned counsel for the accused and Additional Public Prosecutor convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed the homicidal death of deceased Tamodeve. Apart from that, from the evidence of PW-3 Dasru and PW-4 Kamaram before whom the accused made extra judicial confession as also medical evidence of PW-5 Dr. B.K. Tirki, it is established that the death of deceased Tamodeve was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, that has also not been disputed by learned counsel for the accused/appellant. PW-1 Sukman, who is the brother of the accused, has stated that the accused came to his house and made extra judicial confession before him that he has murdered his wife. Thereafter, Panchayat was convened and before the Panchayat also the accused made extra judicial confession regarding commission of offence. The above evidence has been corroborated by the evidence of PW-3 Dasru. Even though this witness has been declared hostile but in the cross-examination by the Public Prosecutor he has categorically stated that the accused made extra judicial confession before him that as his wife Tamodeve (since deceased) was

P.T.O.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

quarrelling with him on the ground that as to why he has consumed her food and she assaulted him with axe, therefore, he attacked the deceased with same axe, as a result of which she died. PW-4 Kamaram has also corroborated the above evidence and stated that the accused made extra judicial confession before the Panchayat that he has assaulted the deceased with axe. PW-5 Dr. B.K. Tirki has also stated that there was injury on the head of the deceased, as a result of which there was fracture of parietal bone which was fatal and sufficient to cause death. Therefore, from the evidence of above witnesses, it is established that the accused assaulted the deceased, as a result of which she received fatal injury on the head and succumbed to the injury. Hence involvement of the accused is established.

Learned counsel for the accused/appellant submitted that if the evidence and case of the prosecution is taken as it is, even then the offence under Section 302 of the I.P.C. was not made out against the accused/ appellant for the reason that the accused after consuming his meal was sleeping, at that time, the deceased came with an axe and attacked him saying that as to why he has consumed her food, which enraged the accused, he stood up and snatched the axe all of a sudden and in a sudden quarrel he assaulted the deceased, therefore, the case of the accused is covered under Exception IV of Section 300 of the I.P.C..

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence. PW-1 Sukman has stated that the accused came and said that deceased Tamodeve attacked him, therefore, he attacked the deceased with axe. PW-3 Dasru before whom the accused made extra judicial confession, in the cross-examination he has stated that the accused informed him that

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when he was sleeping the deceased came with axe and attacked him saying that as to why he has consumed her food, on which he snatched the axe and all of a sudden attacked the deceased. Similar is the evidence of PW-4 Kamaram. The evidence of above witnesses stands corroborated by the medical evidence. Apart from that, PW-6 T.R. Nagvanshi (I.O.) in para-4 of his evidence has stated that he had arrested the accused on 12-4-98 and on examination of his body, he found that there was an injury on eyebrow of the left eye and, therefore, he sent the accused for medical examination under Ex.-P/16. Perusal of Ex.-P/16 shows that there was injury on eyebrow of the accused. Therefore, from the evidence of prosecution witnesses, it is established that in the first instance, the deceased came with axe and assaulted the accused, which enraged the accused, he snatched the axe and assaulted the deceased. In this case, there was no pre-meditation or preparation. The accused assaulted the deceased in a sudden fight, all of a sudden, in a heat of passion and upon sudden quarrel, without taking undue advantage or acted in a cruel or unusual manner, as such, the case of the accused is covered under Exception IV of Section 300 of the I.P.C., therefore, finding of the trial Court convicting the accused under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. The accused is in custody since 4-12-98 thereby he has already undergone 7 years' sentence, as such he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Barve
13-9-06
9.2.